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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Lee J. Peltzman, Esq.
Shainis & Peltzman
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036

Dear Mr. Peltzman:

This is in response to the petition for rule making which you submitted on behalf of Spencer Communications, Inc., licensee of Station WSKT(FM), Channel 224A, Spencer, Indiana, requesting the substitution of Channel 249A for Channel 224A and concurrent modification of the license of Station WSKT(FM). Additionally, in order to accommodate the proposal, you request the substitution of Channel 224A for Channel 249A at Brazil, Indiana, and modification of the license for Station WSDM-FM, Channel 249A, accordingly. You indicate that the substitution requests can be made consistent with the minimum distance separation requirements of the Commission's Rules provided the reference coordinates for Channel 225A at Veedersburg, Indiana, are changed to specify coordinates 40-12-10 North Latitude and 87-15-45 West Longitude to avoid a short spacing to the licensed site of Station WSDM-FM, Brazil, at coordinates 39-30-43 and 87-08-19.

In support of the proposal, you state that the requested substitutions would, inter alia, enable Station WSKT(FM) to increase its power to 6 kilowatts, a benefit not presently available to it. Additionally, you assert that a change in the reference coordinates at Veedersburg would also enable Channel 225A to operate at 6 kilowatts effective radiated power.

Your proposal is technically and procedurally defective. First, according to the Commission's records, a first come, first serve application has been filed for Channel 225A at Veedersburg by Veedersburg Radio (File No. BPH-940215MD), at coordinates 40-12-32 North Latitude and 87-20-19 West Longitude. Veedersburg Radio proposes to operate with 6 kilowatts effective radiated power. As your proposal was filed on March 17, 1994, thirty days after Veedersburg Radio filed its application, the applicant is entitled to cut-off protection from conflicting rule making petitions to amend the FM Table of Allotments. See Conflicts between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part, 58 FR 38536 (July 19, 1993). Although the proposed substitution of Channel 225A at Brazil meets the minimum distance separation requirements of Section 73.207(b)(1) at the application site specified by Veedersburg Radio at coordinates 40-12-32 North Latitude and 87-20-19 West Longitude, as you are aware, it is 7.3 kilometers (4.5 miles) short spaced to the reference coordinates for Channel 225A at Veedersburg at 40-06-47 North Latitude and 87-15-45 West Longitude. As no authorization has been issued to Veedersburg Radio on Channel 225A, your proposal is required to comply with the requirements of Section 73.208 of the Commission's Rules with respect to the allotment reference coordinates designated therefor at Veedersburg.

Secondly, your petition did not include a certificate of service, nor did it indicate that the licensee of Station WSDM-FM, Brazil, Indiana, was served with a copy of the petition. Therefore, your proposal does not comply with the requirements of Section 1.401(d) of the Commission's Rules, which requires that any Commission licensee of permittee whose channel allotment would be

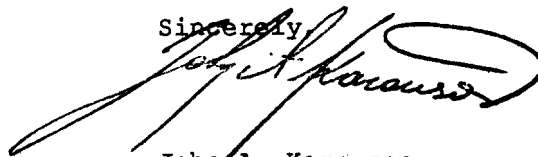
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changed by the grant of a petition be served by the petitioner with a copy of such petition.

In view of the above, the petition for rule making filed on behalf of Spencer Communications, Inc. is unacceptable for consideration. In the event an authorization is issued to the applicant for Channel 225A at Veedersburg, you may wish to refile the proposal at that time. Alternatively, you may wish to determine whether there are other Class A channels available at Brazil, which could be allotted in accordance with the requirements of Section 73.207(b)(1) of the Commission's Rules, to accommodate your modification plans for Station WSKT(FM) at Spencer. Should you desire to pursue an alternate channel at Brazil, you should also indicate a willingness to reimburse Station WSDM-FM for its reasonable costs associated with a frequency change.

Sincerely,



John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

bcc: Dockets Branch via Secretary's Office (Rm. 222) (2 cys.)
Petition filed 3/17/94

joyner/ltrs/ spencer